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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,534	12/05/2003	Eric P. Berg	P686 CON2	7333

7590
Medtronic Vascular, Inc.
Legal Department
3576 Unocal Place
Santa Rosa, CA 95403

04/20/2007

EXAMINER

GANESAN, SUBA

ART UNIT

PAPER NUMBER

3738

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/727,534

Applicant(s)

BERG ET AL.

Examiner

Suba Ganesan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 3,6-8,11,12 and 25-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,9,10 and 13-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 8/24/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

1 DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Species A in the reply filed on 3/22/2007 is acknowledged. Claims 3, 6-8, 11-12, and 25-39 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2, 4-5, 9-10, 13, 15-16, 18-20, 22-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Sahatjian (U.S. Pat. No. 5304121).

4. Sahatjian discloses a delivery catheter, a stent framework and a porous material with a water insoluble salt of a therapeutic material (see figs. 4-6 and col. 9 lines 21-34). The stent framework is made of a metal (nitinol) and can be self expanding (col. 10 lines 7-10). The stent framework is a combination of metallic and polymeric elements; note that examiner is considering a polymeric (hydrogel) coating on a metallic stent to be a framework comprising metallic and polymeric elements. The stent can further comprise a bioadsorbable coating (col. 9 lines 15-20). With respect to claims 13 and 15, note that

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examiner is further considering a coating to be a film. Sahatjian further discloses the use of heparin salt as a therapeutic salt (col. 8 lines 17-30 and col. 10 lines 1-6).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 14, 17, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sahatjian (U.S. Pat. No. 5304121) in view of Hunter (U.S. Pat. No. 5716981).

7. Sahatjian is explained supra. However, Sahatjian does not disclose a coating of silicone or a radioactive salt. Hunter teaches the coating of stents (col. 1 lines 13-18) with radioactive materials (col. 15 lines 19-30). The stent material can be silicone (col. 16 lines 31-55). Therefore it would have been obvious to one of ordinary skill in the art to modify the stent of Sahatjian to include silicone for the purpose of creating a less rigid stent to minimize local tissue trauma and facilitate insertion within the body. It would have further been obvious to one of ordinary skill in the art at the time of the invention to modify the therapeutic salt of Sahatjian to include a radioactive material as taught by Hunter for the purpose of providing anti-angiogenic therapy at a specific location.

8. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sahatjian (U.S. Pat. No. 5304121) in view of Tang et al. (U.S. Pat. No. 4920203).

9. Sahatjian is explained supra. However, Sahatjian does not disclose the therapeutic salt being a barium salt. Tang teaches the use of Barium salts for a therapeutic coating on stents (col. 20 lines 41-62). Therefore it would have been obvious to one of ordinary skill in the art to modify the therapeutic salt of Sahatjian to be Barium as taught by Tang for the purpose of creating a radiopaque stent.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suba Ganesan whose telephone number is 571-272-3243. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SDG 4/9/2007

BRIAN E. PELLEGRINO
PRIMARY EXAMINER

A handwritten signature in cursive script that reads "Brian E. Pellegrino".